IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4949 OF 2005.

Satish Namdeo Chavan ... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. Vijay Patil, for the Petitioner.

Mr. H.S. Venegaonkar, for Respondent No.5.

Mr. M.H. Solkar, A.G.P. for the respondent nos.1 to 4.

CORAM : S.A. BOBDE, J.

July 29, 2005.

P.C.:

1. Rule returnable forthwith.

Mr. Solkar, learned Asstt.Govt. Pleader for the respondent nos.1 to 4 and Mr. Venegaonkar for the respondent no.5, appear and waive service of rule.

Heard by consent.

2. The Petitioner has challenged the order of the

Tahasildar dated 25th July 2005 by which the voters' list for the ensuing Gram Panchayat Election in respect of village Mahagaon has been changed. The change is purportedly done in pursuance of the order of this Court dated 20th July 2005 in Writ Petition No.4731 of 2005. On that day, 3 Writ Petitions bearing Writ Petition Nos.4731, 4732 and 4733 of 2005 in respect of the villages of Mahagaon, Kodoli and Dhangarwadi were disposed of by a common order. The relevant part of the order reads as follows :-

> "2. The only prayer made by the Petitioners is that they have preferred certain objections in regard to the voters list being prepared in the ensuing Gram Panchayat elections and that the preliminary voters list will be published only after considering all objections raised by the petitioners in all these Writ Petitions. The learned Asstt. Govt. Pleader makes a statement on behalf of the State that all the objections raised by all the Petitioners in all these Writ Petitions shall be considered before publishing the final voters' list."

3. Now, it appears that the Asstt. Govt. Pleader communicated this order to the concerned Authority who has altered the voters' list of each ward under Rule 3 of the Bombay Village Panchayat Rules 1969. It must be noted that under the Village Panchayats Act, the voters' list of the Legislative Assembly constituency is adopted, vide

section 12. The change that is effected in the present case is in respect of the eligibility of certain voters to vote from certain wards. The present Petition viz. Writ Petition No.4949 of 2005 has been filed challenging the impugned order dated 25th July 2005 passed under Rule 3 of the said Act.

4. Mr. Vijay Patil, learned Counsel for the Petitioner pointed out and in my view rightly that the order dated 20th July 2005 of this Court was obtained and making an incorrect representation to this Court that the election programme has not been announced. This programme has already been announced on 15th July 2005. Mr. Venegaonkar, learned Counsel who appeared for the Petitioner in Writ Petition No.4731 of 2005 states that the statement in the earlier Petition, that no election programme has been declared by the Respondents and it is likely to be published very soon most probably by 20th July 2005, was mistakenly made since the Petitioner had left the village on 15th July 2003 for Mumbai for filing the Writ Petition.

5. Be that as it may, it is clear that the Petitioner would not have been entitled from relief whatsoever had it been disclosed for the Court that the election programme

has already been announced. In fact, on the contrary, a categorical statement was made that it had not been announced. This statement was not controverted by the learned Asstt. Govt. Pleader either. The aforesaid order of this Court dated 15th July 2003 came to be passed in the above circumstances. It is an admitted fact that the election programme has been postponed in view of the unprecedented torrent ial rains in the region, by one week. Now, that facts have been brought by the Petitioner in the present case. The following order is passed by consent:-

It is clear that the earlier order of this Court dated 20th July 2005 in Writ Petition Nos.4731, 4732 and 4733 of 2005 is hereby recalled. Further the impugned order dated 25th July 2005 is hereby quashed and set aside. If the Petitioners in the earlier Petitions have any grievance regarding the election, they may avail of such remedy as may be available in the law.

6. The rule is made absolute in the aforesaid terms.

(S.A. BOBDE, J.)